**THE HONOURABLE SRI JUSTICE G. CHANDRAIAH**

**W.P. No.6066 of 2003**

**ORDER**:

This writ petition has been filed seeking for issuance of Writ of *Mandamus* declaring the action of the respondents in deciding to demolish the compound wall of the petitioner without issuing any notice as illegal, arbitrary and in violation of principles of natural justice and further direct the respondents to conduct the survey by issuing notices to all the concerned persons in the presence of concerned persons by adopting a scientific method as provided under law.

The case of the petitioner is that he purchased three plots forming part of survey Nos.1064 and 1065 of Kodad village and Mandal, Nalgonda District admeasuring 726 square yards, 405 square yards and 363 square yards totally admeasuring 1494 square yards through three different registered sale deeds from Cherukuri Sharmishta dated 30-05-1983, from Dasari Devendra Prasad, dated 04-07-1983 and from Shaik Subhani dated 27-08-1991 respectively for a valuable consideration.

It is stated that since after the purchase of the above said plots, the petitioner is in continuous possession and enjoyment of the said plots without any hindrance or interference by any person or authority. It is also stated that the petitioner applied for construction of compound wall in the office of Grampanchayat, Kodad on 21-01-2003 to protect above said plotted lands and the Grampanchayat by its proceedings No.GPK/B/24/2003 dated 24-02-2003 granted permission for construction of the compound wall. Accordingly he constructed the compound wall.

It is also the case of the petitioner that as per the news report published in Eenadu Telugu Daily of Nalgonda District edition dated 02-04-2003 started surveying the land of
"Pedda Cheruvu" of Kodad Village. While so, the respondents have decided to demolish the buildings constructed in and around the Pedda Cheruvu of Kodada Village, which are constructed within the boundary limits of Pedda Cheruvu. He further submits that the plots purchased by him were away from the Pedda Cheruvu and these are private patta lands. Therefore, the petitioner apprehended that the authorities have proceeded to demolish the compound wall without any notice.

The petitioner is the absolute owner of the plots in question and constructed the compound wall with due permission.
The respondents filed a counter stating that the plots referred by the petitioner is farming part of Survey Nos.1064 and 1065 and alleged to be the private patta land. The survey numbers are adjacent to the Pedda Cheruvu Shikam land and there is no other land in between Shikam land and the above survey numbers. Hence there is every possibility of the petitioner encroaching into the Government land. From the counter affidavit filed by the respondents there is no dispute that the lands referred to by the petitioner are private patta lands and the petitioner is the owner of the said lands and he is in possession of the same. The petitioner constructed the compound wall after obtaining due permission from the Grampanchayat.

Counter filed by the respondents reveals that since the lands of the petitioner are situated adjacent to the Shikam, which is a Government land and in between the lands of the petitioner and the Government there is no other land. Therefore, there is every possibility of the petitioner encroaching into the Government land. No authority is

estopped from taking action against the encroachers in the event of encroaching the Government land.

But without there being any encroachment of the Government land by the petitioner, the respondents have no authority for taking decision to demolish the compound wall constructed by the petitioner after the permission is being obtained by him.

Even for the purpose of removal of any compound wall constructed in the patta land, the authorities are not expected to take any action of demolition without following due process of law.

Learned counsel for the petitioner submits that the petitioner constructed the compound wall to avoid any encroachments into his lands by any third party. He also submits that the respondents have no authority to take any steps to demolish the petitioner's compound wall since the same is being constructed over the private patta lands of the petitioner after obtaining the necessary permission from the Grampanchayat.

On the other hand, learned standing counsel for the Municipality submits that since it is noticed by the respondents that certain individuals have constructed the temporary houses by encroaching the South side of the Pedda Cheruvu. Kodada is the source for drinking water and for civic amenities in future for the fast growing Kodada Town, loosing its bed level gradually due to illegal encroachment. Therefore, the authorities have conducted the survey and found certain individuals have encroached and consequently issued a letter No.C/368/2000 dated 18-04-2000 listing out the names of the encroachers in that process the authorities have taken steps to demolish illegal structures made by the encroachers. He submits that though the name of the petitioner does not find place in the list since the petitioner's lands are situated adjacent to the Government land

therefore there is every possibility of the petitioner encroachment into the Government land. The submission made by the learned standing counsel cannot be accepted for the reason that merely because the petitioner's land is situated adjacent to the Government land the petitioner is likely to be encroached into the Government land.

It is always open to the authorities to take necessary action in accordance with law or by following due process of law, if there is any encroachment of the Government land. In the instant case it is not the case that the petitioner had encroached the Government land or the Shikam land. On the other hand, it is the case of the petitioner that he constructed the compound wall to protect the said lands from the encroachments by the third parties.

The right of the petitioner cannot be affected or deprived by the authorities without following due process of law.

Having regard to the submissions made by the learned counsel for the petitioner and the learned standing counsel and since the petitioner construed the compound wall around his private patta lands and the action of the respondents only based on assumption that the petitioner made encroachment into the Government land since the petitioner's land is adjacent land. There is no basis for such assumption.

In view of the above facts and circumstances, the petition is disposed of with a direction to the respondents not to demolish the compound wall of the petitioner without issuing any notice and following due process of law. No order as to costs.

**JUSTICE G. CHANDRAIAH**

**Date: 12-07-2006**
**LSK**